

Bureau of Industry and Security, Commerce

§ 719.2

imposing penalties pursuant to 22 CFR part 103, subpart C.

(2) *Violations of the International Emergency Economic Powers Act (IEEPA) subject to judicial enforcement proceedings.* Section 719.3 of the CWCRC sets forth violations of the Chemical Weapons Convention for which the statutory basis is the IEEPA. BIS refers these violations to the Department of Justice for civil or criminal judicial enforcement.

(3) *Violations and sanctions under the Act not subject to proceedings under the CWCRC.* Section 719.4 of the CWCRC sets forth violations and sanctions under the Act that are not violations of the CWCRC and that are not subject to proceedings under the CWCRC. This section is included solely for informational purposes. BIS may assist in investigations of these violations, but has no authority to initiate any enforcement action under the CWCRC.

NOTE TO § 719.1(a): This part 719 does not apply to violations of the export requirements imposed pursuant to the Chemical Weapons Convention and set forth in the Export Administration Regulations (EAR) (15 CFR parts 730 through 774) and in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(b) *Definitions.* The following are definitions of terms as used only in parts 719 and 720 of the CWCRC. For definitions of terms applicable to parts 710 through 718 and parts 721 and 722 of the CWCRC, see part 710 of the CWCRC.

Act (The). The Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701–6777).

Assistant Secretary for Export Enforcement. The Assistant Secretary for Export Enforcement, Bureau of Industry and Security, United States Department of Commerce.

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further administrative review, but which may be subject to collection proceedings or judicial review in an appropriate Federal court as authorized by law.

IEEPA. The International Emergency Economic Powers Act, as amended (50 U.S.C. 1701–1706).

Office of Chief Counsel. The Office of Chief Counsel for Industry and Security,

United States Department of Commerce.

Report. For purposes of parts 719 and 720 of the CWCRC, the term “report” means any declaration, report, or advance notification required under parts 712 through 715 of the CWCRC.

Respondent. Any person named as the subject of a letter of intent to charge, or a Notice of Violation and Assessment (NOVA) and proposed order.

Under Secretary, Bureau of Industry and Security. The Under Secretary, Bureau of Industry and Security, United States Department of Commerce.

[71 FR 24929, Apr. 27, 2006, as amended at 73 FR 78183, Dec. 22, 2008]

§ 719.2 Violations of the Act subject to administrative and criminal enforcement proceedings.

(a) *Violations—(1) Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the Act.

(2) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(i) To establish or maintain any record required by the Act or the CWCRC; or

(ii) To submit any report, notice, or other information to the United States Government in accordance with the Act or the CWCRC; or

(iii) To permit access to or copying of any record required to be established or maintained by the Act or the CWCRC, including any record that is exempt from disclosure under the Act or the CWCRC.

(b) *Civil penalties—(1) Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have disrupted, delayed or otherwise impeded an authorized inspection, as set forth in paragraph (a)(1) of this section, shall pay a civil penalty in an amount not to exceed \$25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any

record or submit any report, notice, or other information required by the Act or the CWCR, or to have willfully failed or refused to permit access to or copying of any record, including any record exempt from disclosure under the Act or the CWCR as set forth in paragraph (a)(2) of this section, shall pay a civil penalty in an amount not to exceed \$5,000 for each violation.

(c) *Criminal penalty.* Any person that knowingly violates the Act by willfully failing or refusing to permit entry or inspection authorized by the Act; or by willfully disrupting, delaying or otherwise impeding an inspection authorized by the Act; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information; or by willfully failing or refusing to permit access to or copying of any record, including records exempt from disclosure under the Act or the CWCR, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, be imprisoned for not more than one year, or both.

(d) *Denial of export privileges.* Any person in the United States or any U.S. national may be subject to a denial of export privileges after notice and opportunity for hearing pursuant to part 720 of the CWCR if that person has been convicted under Title 18, section 229 of the United States Code.

§ 719.3 Violations of the IEEPA subject to judicial enforcement proceedings.

(a) *Violations—(1) Import restrictions involving Schedule 1 chemicals.* Except as otherwise provided in § 712.2 of the CWCR, no person may import any Schedule 1 chemical (See Supplement No. 1 to part 712 of the CWCR) unless:

- (i) The import is from a State Party;
- (ii) The import is for research, medical, pharmaceutical, or protective purposes;
- (iii) The import is in types and quantities strictly limited to those that can be justified for such purposes; and
- (iv) The importing person has notified BIS not less than 45 calendar days before the import pursuant to § 712.6 of the CWCR.

(2) *Import restrictions involving Schedule 2 chemicals.* Except as otherwise provided in § 713.1 of the CWCR, no person may, on or after April 29, 2000, import any Schedule 2 chemical (see Supplement No. 1 to part 713 of the CWCR) from any destination other than a State Party.

(b) *Civil penalty.* A civil penalty not to exceed \$50,000 may be imposed in accordance with this part on any person for each violation of this section.¹

(c) *Criminal penalty.* Whoever willfully violates paragraph (a)(1) or (2) of this section shall, upon conviction, be fined not more than \$50,000, or, if a natural person, imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by like fine, imprisonment, or both.²

[71 FR 24929, Apr. 27, 2006, as amended at 72 FR 14410, Mar. 28, 2007]

§ 719.4 Violations and sanctions under the Act not subject to proceedings under the CWCR.

(a) *Criminal penalties for development or use of a chemical weapon.* Any person who violates 18 U.S.C. 229 shall be fined, or imprisoned for any term of years, or both. Any person who violates 18 U.S.C. 229 and by whose action the death of another person is the result shall be punished by death or imprisoned for life.

(b) *Civil penalty for development or use of a chemical weapon.* The Attorney General may bring a civil action in the appropriate United States district court against any person who violates 18 U.S.C. 229 and, upon proof of such violation by a preponderance of the evidence, such person shall be subject

¹The maximum civil penalty allowed under the International Emergency Economic Powers Act is \$50,000 for any violation committed on or after October 23, 1996 (15 CFR 6.4(a)(5)).

²Alternatively, sanctions may be imposed under 18 U.S.C. 3571, a criminal code provision that establishes a maximum criminal fine for a felony that is the greatest of: (1) The amount provided by the statute that was violated; (2) an amount not more than \$250,000 for an individual, or not more than \$500,000 for an organization; or (3) an amount based on gain or loss from the offense.